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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

November 3, 1994

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation -- MM Docket No. 92-265

Dear Mr. Caton:

You are hereby advised that on this date the attached written ex parte presentations were made in the above-referenced proceeding to the following Commission personnel:

Chairman Hundt
Commissioner Quello
Commissioner Barrett
Commissioner Chong
Commissioner Ness

The presentations follow meetings held between representatives of United States Satellite Broadcasting Company, Inc. ("USSB") and the authors of the written presentations. The presentations submitted herewith support USSB's "Opposition to Petition for Reconsideration of the National Rural Telecommunications Cooperative," submitted in MM Docket No. 92-265, on July 14, 1993.

An original and one copy of this letter and two copies of each of the attached presentations are being filed. If additional copies of this filing are required, USSB will supply them immediately upon request. It is believed that the original

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letters from Congressmen Brown and Paxon were delivered directly to the office of Chairman Hundt.

Should any questions arise concerning this matter, or should any additional information be necessary or desired, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH

Patricia A. Mahoney
Counsel for United States
Satellite Broadcasting
Company, Inc.

PAM/dlr
cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness

Congress of the United States
Washington, DC 20515

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

We are aware of the letter sent to you on June 15, 1994 by several Members of Congress, addressing Section 19, the program access provision, of the Cable Act of 1992. We believe that letter fundamentally misstates the goal of Section 19, which was intended only to address exclusive practices by cable operators. Non-cable operations, such as direct broadcast satellite (DBS) are not covered by Section 19.

As the title of the Cable Act clearly indicates, the legislation specifically was designed to address the problems suffered by the public as a result of cable's monopolistic practices. Many of our constituents complained about cable operator's abuses of their power.

A key provision of the Act is Section 19, which addresses cable programming practices. It precludes cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable. It permits exclusive contracts in areas served by cable, if the FCC determines that such contracts are in the public interest. We submit, however, that a search of the entire Cable Act and its legislative history will confirm that only program contracts involving cable operators were intended to fall within the province of Section 19 and the Act as a whole.

Moreover, a fundamental purpose intended to be served by Section 19 is the promotion of technologies that can compete with cable operations. In this regard, competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have the perverse effect of creating a monopoly <u>within</u> DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.

We believe the Commission's initial conclusions on programming exclusivity -- that Section 19 applies only to cable operators -- were correct, and the rules adopted by the FCC thus properly implement Section 19. We understand the Attorneys General of 45 states and the District of Columbia, the U.S. Department of Justice, and Judge John Sprizzo, U.S. District Court, Southern District of New York, all agree that the Cable Act of 1992 does not prohibit exclusive contracts by DBS providers and programmers.

We have attached material which provides graphic illustration of the fact that the FCC's present rules will make extensive programming available to DBS customers.

We appreciate your consideration of our views.

Sincerely,

Michael G. Oxley
Member of Congress

J. Alex McMillan
Member of Congress

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Congress of the United States
House of Representatives
BILL PAXON
27TH DISTRICT, NEW YORK

October 10, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Dear Chairman Hundt:

I am writing to you in regards to Section 19, the program access provision, of the Cable Act of 1992 and its applicability to non-cable operations such as direct broadcast satellites (DBS).

As you already know and as my colleagues have informed you Section 19 of the Cable Act addresses cable programming practices. It prevents cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable. It is important to note that the Cable Act does not address non-cable operations like DBS.

Competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have a perverse effect of creating a monopoly within DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.

With this in mind, I would like to state my support of the Commission's initial conclusions in its "First Report and Order." I believe that Section 19 applies only to cable operators and the rules adopted by the FCC thus properly implement Section 19. As I understand, the Attorneys General of 45 states and the District of Colombia, and the Department of Justice all agree that the Cable Act of 1992 does not prohibit exclusive contracts by the DBS providers and programmers.

I appreciate your time and consideration in this most important matter. Please do not hesitate to contact me or David Marventano of my staff to discuss this further.

Best wishes.

Sincerely,

BILL PAXON
Representative

BP: dm

SHERROD BROWN
THIRTEENTH DISTRICT
OHIO

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS (VICE-CHAIRMAN)
SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT

COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON EUROPE AND THE MIDDLE EAST
SUBCOMMITTEE ON ASIA AND THE PACIFIC
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Congress of the United States

House of Representatives

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October 27, 1994

The Honorable Reed Hundt
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Hundt:

I am writing to you to express my interest and concern surrounding the FCC's rulemaking on competition and diversity in video programming distribution.

The situation facing the direct broadcast satellite (DBS) industry merits our close scrutiny as we go about creating a vital telecommunication infrastructure. Most importantly, I believe congressional intent in the 1992 Cable Act was to foster increased competition. In relation to the DBS industry, I believe that increased competition may actually require the use of exclusivity arrangements.

As you know, DirecTV has a 5-1 (150-30 channel) capacity advantage over USSB. Without the possibility of differentiating itself from DirecTV through the use of unique programming, USSB will be unable to attract customers with its more limited offering. In addition, DirecTV already has its own form of "de facto" exclusivity by providing over 120 channels of programming that USSB can not even "fit" into its capacity. I do not consider this scenario to reflect a level playing field for competitive purposes.

At the same time, I appreciate the Commission's concerns about allowing programers and distributors to monopolize any significant portion of the industry. Vertical integration by programers and distributors is a real and worthwhile concern for the FCC to monitor.

In your continuing efforts to implement Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992 I ask that you consider the realities of the limitations USSB faces due to its limited capacity. Your attention to this issue is greatly appreciated.

Sincerely,

Sherrod Brown
Member of Congress